IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.824 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HASMUKHBHAI DHANABHAI MALI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 824 of 2004

MR BS PATEL for Petitioner No. 1-3

MRS RANJAN B PATEL for Petitioner No. 1-3

MR NAGESH SOOD, AGP for Respondent No. 1

MR SUNIL S JOSHI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 04/08/2004

ORAL JUDGEMENT

RULE. Mr.Nagesh Sood, learned AGP, appears and waives service of rule on behalf of respondent No.1 and Mr.Sunil Joshi, learned Advocate, appears and waives

service of rule on behalf of respondent No.2. With the consent of the respective parties, the matter is taken up for final hearing today.

2. The brief facts of the present petition is that one Premilaben Kikabhai was the owner of the land bearing Survey No.233/1 admeasuring 1 Acre 37 Gunthas situated at Village Jalod, Taluka Limbdi, District Panchmalas. As she wanted to convert the said land as non-agricultural land, an application was made to the Taluka Development Officer (TDO), Jalod for N.A. use permission. By order dated 10-12-1981 the TDO, Jalod granted the N.A. permission. Thus, after obtaining necessary permission, Prelimlaben Kikabhai done the plotings and sold different plots to different persons, in all about 58 different persons. The petitioners herein are the allottees / purchasers of Plot Nos.6, 24 and 25. Necessary entries in favour of the petitioners also came to be effected in the record of rights.

3. It seems that some plot holders, more particularly plot holders being Plot Nos.52 to 58 had committed some irregularities and constructed in the land in question contrary to the N.A. permission and, therefore, proceedings were initiated by the TDO, Jalod for cancellation of the N.A. use permission granted on 10-12-1981. Notices were issued upon the original land owner i.e. Premilaben in the year 1992. On the basis of the notice, reply filed by Premilaben, the original land owner, and the report submitted by the authority, the TDO, Jalod by its order dated 05-04-1993 cancelled the N.A. use permission dated 10-12-1981 as a whole. As soon as the petitioners came to know about the same, they preferred a revision application before the revisional authority i.e. Secretary (Appeals), Revenue Department, State of Gujarat being Revision Application No.1 of 2001 and it was submitted on behalf of the petitioners that before passing the impugned order dated 05-04-1993, cancelling the N.A. Permission, no notices have been served upon the petitioners and the said order is passed without giving any opportunity of hearing to them. It was also submitted on behalf of the petitioners that for the fault and illegality committed on behalf of the plot holders being Plot Nos.52 to 58, the petitioners should not suffer. In spite of the submissions and contentions the revisional authority by its order dated 24/27-11-2003 dismissed the said revision application without considering the aforesaid arguments and confirmed the order dated 05-04-1993 passed by the TDO, Jalod. Now, the present petition.

4. Mr.Vyas, learned advocate for the petitioners, has submitted that the order passed by the TDO, Jalod was against the principles of natural justice. Before cancelling the N.A. use permission neither any show-cause notice has been issued upon the petitioners nor the petitioners were given any opportunity of hearing. Mr.Vyas further submitted that the petitioners have purchased Plot Nos.6, 24 and 25 by a registered Sale Deed and necessary entries to that effect were also made in the revenue record, however, no notice came to be served upon the petitioners and because of the illegality committed by the other plot holders being Plot Nos.52 to 58 the petitioners are punished. He has further submitted that the aforesaid aspect was submitted before the revisional authority but the same was not considered at all.

5. Mr.Sunil Joshi, learned advocate, appears on behalf of respondent No.2 - TDO. No counter is filed on behalf of TDO, Jalod. However, the aspect of non-issuance of notice upon the petitioners and not giving any opportunity of hearing to the petitioners is not disputed. When the N.A. use permission is cancelled and prior thereto if the petitioners have already put up a construction there are civil consequence. Before cancelling N.A. use permission the TDO, Jalod should have issued show-cause notice to the petitioners and ought to have given an opportunity of hearing to the petitioners. As in the present case, neither show-cause notice nor opportunity of hearing was given to the petitioners and, therefore, the impugned order passed by the TDO, Jalod dated 05-04-1993 requires to be quashed and subsequent order dated 24/27-11-2003 passed by the revisional authority in Revision Application No.1 of 2003 also requires to be quashed and set aside and.

6. For the reasons stated above, the petition succeeds. The impugned order passed by the TDO, Jalod dated 05-04-1993 (Annexure-A to the petition) and subsequent order passed by the revisional authority in Revision Application No.1 of 2003 dated 24/27-11-2003 (Annexure-B to the petition) are hereby quashed and set aside and. It will be open to the TDO, Jalod to initiate proceedings and take an appropriate decision after giving an opportunity of hearing to the petitioners and after issuing show-cause notice. The petitioners to press all contentions which are available to them, inclusive of fact that they have not committed any illegality and no illegal construction is carried out by them. Plot holders being Plot Nos.52 to 58 might have constructed illegal construction.

7. Rule is made absolute to the aforesaid extent. No order as to costs.

Sd/-

[M.R.SHAH, J]

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'Bhavesh'